

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Developing a Unified Inter-carrier)	CC Docket No. 01-92
Compensation Regime)	
)	
Petitions for Declaratory Ruling Regarding)	DA 02-2436
Inter-carrier Compensation for Wireless Traffic)	

**REPLY COMMENTS
OF THE CALIFORNIA RTCS**

Sean P. Beatty
Jeffrey F. Beck
E. Garth Black
Patrick M. Rosvall
Mark P. Schreiber
COOPER, WHITE & COOPER LLP
201 California Street, 17th Floor
San Francisco, CA 94111
Telephone: (415) 433-1900
Telecopier: (415) 433-5530

November 1, 2002

Attorneys for California RTCS

Calaveras Telephone Company, Cal-Ore Telephone Co., Ducor Telephone Company, Evans Telephone Company, Foresthill Telephone Co., Kerman Telephone Co., Pinnacles Telephone Co., The Ponderosa Telephone Co., Sierra Telephone Company, Inc., The Siskiyou Telephone Company, and The Volcano Telephone Company (collectively the “California RTCs”) respectfully submit these Reply Comments in response to the Commission's Public Notice DA 02-2436, released September 30, 2002, seeking comment on petitions filed by T-Mobile, *et al.* (CMRS Petitioners) and US LEC Corp which raise issues relating to the applicability of access charges to certain forms of wireless-related traffic carried over wireline facilities. These Reply Comments also respond to the Opening Comments filed by parties on October 18, 2002.

I. INTRODUCTION.

The California RTCs are incumbent small independent local exchange telephone companies, all of which are also Rural Telephone Companies (RTCs) as defined in the Communications Act of 1934, as amended. Their service territories include the most rural areas of the State of California, and they range in size from companies serving a few hundred access lines to one company with approximately 20,000 access lines.

The two petitions which are the subject of the Commission's Public Notice both address the applicability of access charges of wireline service providers to certain forms of wireless-related traffic. Both interstate and intrastate access charges are critical sources of revenue for the California RTCs, since toll service providers extensively utilize the facilities of the California RTCs for the origination and termination of long distance traffic. The Commission should act in both of these petitions to maintain and affirm the applicability of its access charge rules to all

forms of long distance or “non-local” traffic, whether the traffic relates to wireless carriers or to any other class of service provider.

II. THE US LEC PETITION.

According to the Commission's Public Notice, the US LEC petition, filed September 18, 2002, seeks a ruling by the Commission “reaffirming that LECs are entitled to recover access charges from IXCs for the provision of access service on interexchange calls originating from, or terminating on, the networks of CMRS providers.” This principle correctly states the applicability of both interstate and intrastate access charges to long distance calls which also involve a wireless service provider. Nothing in the access charge rules exempts toll service providers from access charges merely because one end of the call is carried over a wireless telephone. The presence of the CMRS user on one end of the call does not change the fact that the underlying toll service provider is obliged to pay access charges for the LEC-related services utilized on the other end of the call.

The majority of parties filing opening comments supported the US LEC petition and recognized the applicability of access charges to all forms of toll traffic originating or terminating on an LEC's network. As noted in the opening comments of the “Alliance” of rural RTCs, the classification of “IXC” for access charge purposes also extends to entities such as RBOCs which provide long distance calling services.¹ Similarly, wireless providers of long distance telephone services should continue to be treated the same as other toll service providers and should be required to pay access charges for the termination of “non-local” calls originated on their

¹Alliance comments at p. 3

networks.²

While supporting the Commission's adoption of the principle advocated in the US LEC petition, the California RTCs also state that they do not have knowledge of the specific facts underlying the dispute between US LEC and the “one IXC” referred to in its petition as having ceased to pay its access charge bills.³ Various of the commenting parties suggested in their opening comments that US LEC is employing an artificial routing scheme specifically designed with the access charge rules in mind, and that the general rule of access charge applicability should therefore not be applied in this instance. If the “one IXC” in question believes that US LEC is misusing the Commission's rules, it may bring such claims before the Commission for adjudication. Such a claim would not, however, affect the continued general applicability of the principle that access charges are properly applied to all long distance traffic, including calls originating or terminating on wireless networks.

III. THE T-MOBILE PETITION.

The CMRS Petitioners are seeking a Commission ruling against the validity of state commission-approved access tariffs that by their terms specifically apply to termination of CMRS traffic routed to rural ILECS with which the CMRS carrier has failed to establish either local interconnection or an agreement for “indirect” local interconnection. The CMRS Petitioners attempt to base their request on the provisions of the Telecommunications Act of

²With the proliferation of “nationwide toll-included” calling plans by wireless service providers, an increasing proportion of CMRS-delivered traffic will properly be subject to access charges. The elimination of the third-party IXC for many of such calls does not affect the applicability of access charges for use of the wireline local exchange network.

³US LEC petition at p. 9.

1996, but their claims do not find support in either terms of the statute or in the prior rulings of the Commission. The petition of the CMRS Petitioners should be denied.

To avail themselves of the “local interconnection” provisions of the 1996 Act, the CMRS Petitioners would be required to enter into a local interconnection agreement with the rural ILEC and to establish a point of local interconnection at a technically feasible point within the local carrier's network.⁴ The CMRS Petitioners have taken no steps to comply with these provisions of the 1996 Act, despite the fact that they are the parties obligated to initiate local interconnection negotiations. Instead, these carriers have chosen to interconnect solely at an RBOC LATA tandem switch and are attempting to obtain a “free ride” on all independent LEC facilities connected with that tandem facility.

In response to this tactic, rural ILECS in some states have obtained state commission approval for access tariffs that are specifically applicable to termination of wireless traffic “dumped” onto the wireline network by CMRS carriers, which have ignored their interconnection obligations under the 1996 Act.⁵ The CMRS Petitioners have been unsuccessful in convincing these state commissions that they are entitled to free use of independent rural LEC facilities. Instead of living up to their obligations under these lawful tariffs, the CMRS Petitioners are now seeking the assistance of this Commission in their efforts to ride roughshod over small rural LECs.

In their petition to the Commission, the CMRS Petitioners rely on several assertions that

⁴1996 Act, section 251 (c) (2) (B).

⁵The opening comments filed by and on behalf of these rural LECs describe the “stonewalling” by the CMRS carriers that led to the filing of the tariffs. See, *e.g.*, comments of the Missouri ITC Group, Missouri STC Group, and OPASTCO.

will not withstand close examination. Their petition claims (1) that the quantity of the traffic terminated to rural LECs is so slight that it does not justify the expense of contract negotiations, (2) that “bill and keep” is the default alternative where the CMRS carrier has not even sought to negotiate local interconnection, and (3) that any charges applicable to the traffic would have to be computed under TELRIC principles.

In raising the issue of alleged *de minimis* traffic volumes, the CMRS Petitioners fail to explain how the volume of this terminating traffic can at the same time be so small as to be unworthy of the CMRS carriers undertaking interconnection negotiations and so huge as to require the intervention of this Commission to invalidate the state commission-mandated solutions. If, in fact, there is only minimal traffic, the use of tariffs as a compensation mechanism of general applicability is the logical alternative where the CMRS provider has not sought a local interconnection agreement. A more likely scenario, however, is that the CMRS Petitioners are routing ever-increasing quantities of long-distance calls generated by their “nationwide long distance” calling plans to rural LECs and are attempting an end run around this Commission's clear policies applying access charges to CMRS-related long distance traffic.⁶

The suggestion by the CMRS Petitioners that “bill and keep” principles should be applied to this one-way traffic ignores the fact that the bill and keep principle is part and parcel of the local interconnection procedures under the 1996 Act. Bill and keep is typically applied in local interconnection negotiations and arbitrations where traffic is roughly “balanced” between the parties to the agreement. The CMRS Petitioners have not, however, sought local interconnection agreements with the rural LECS and are, instead, attempting to use the bill and keep principle as

⁶See footnote 7, *infra*.

an excuse for not paying lawful access charges on traffic that is principally one-way, and which, in many instances, would not qualify as “local” traffic under an interconnection agreement.⁷

Similarly, the CMRS Petitioners are seeking to obtain the supposed “benefit” of TELRIC pricing for rural LEC access tariffs without undertaking the local interconnection procedures to which TELRIC pricing principles actually apply. The level of these access charges has been adjudicated by the state commissions which have approved the specific access tariffs, in accordance with cost allocation and pricing rules determined by the state commissions to be properly applicable. The proper venue in which to raise issues relating to pricing and cost determination is in these state proceedings and not by collateral attack before this Commission.

The CMRS Petitioners suggest that they are utilizing a long-established “Type 2” interconnection model and that this eliminates any obligation they have to pay compensation, tariffed or otherwise, for the use of access facilities of “downstream” rural LECs. This argument conveniently ignores the changes in interconnection rules under the 1996 Act⁸. The historical form of Type 2 interconnection included access compensation paid by the CMRS carrier to the RBOC which was then passed through by the RBOC to the connecting independent rural LECs. The post-1996 RBOC tandem interconnection agreements and tariffs have, however, eliminated this payment of compensation to the rural LECs. The CMRS Petitioners cannot, therefore, rely on this form of interconnection agreement to fulfill their obligations to independent LECs

⁷The opening comments of many parties noted the Commission's clear statement of intention in the Local Interconnection Order, FCC 96-325, at Paragraphs 1033-1043, to preserve the then-current applicability of transport and termination rates for “local” calling and access charges for long distance traffic to or from CMRS providers. See, *e.g.*, OPASTCO Comments at p 9, John Staurulakis, Inc. Comments at pp 8-11.

⁸See Opening Comments of the Oklahoma Rural Telephone Companies

subtending the RBOC tandem. One obvious, efficient, and simple solution would be for the Commission to require that all tandem-based interconnection agreements must provide for the pass-through by the RBOCs of the access charges of the subtending rural LECs. This approach would greatly simplify the compensation process while preserving the legitimate economic interests of all concerned. As noted in the Opening Comments of the Oklahoma Rural Telephone Companies, the state commission-adopted tariffs to which the CMRS Petitioners are objecting have been precipitated by the combined actions of the nationwide CMRS providers and the RBOCs in agreeing to tandem-level interconnection agreements that eliminate the historical pass-through of rural LEC access payments under pre-1996 Type 2 interconnection agreements.

No carrier, wireless or otherwise, should be allowed to avoid its interconnection obligations under the 1996 Act while simultaneously insisting on “free-ride” use of another carrier's network. The Commission should reject the petition of T-Mobile and the other CMRS Petitioners.

IV. CONCLUSION.

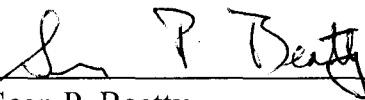
For the foregoing reasons, the California RTCs respectfully request that the Commission should affirm the applicability of access charges to CMRS-related toll traffic, as requested in the

US LEC Petition, and reject the efforts of the CMRS Petitioners to avoid payment of any compensation whatever for their use of the networks of rural LECs.

Dated: November 1, 2002

Respectfully Submitted

Sean P. Beatty
Jeffrey F. Beck
E. Garth Black
Patrick M. Rosvall
Mark P. Schreiber
COOPER, WHITE & COOPER LLP
201 California Street, 17th Floor
San Francisco, CA 94111
Telephone: (415) 433-1900
Telecopier: (415) 433-5530

By: 
Sean P. Beatty
Attorneys for California RTCs

CERTIFICATE OF SERVICE

I, Noel Gielegthem, declare:

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is COOPER, WHITE & COOPER LLP, 201 California Street, 17th Floor, San Francisco, CA 94111.

On November 1, 2002, I caused copies of the foregoing **REPLY COMMENTS OF CALIFORNIA RTCs** to be filed electronically with the FCC and, in addition, to be served on the following parties by placing a true copy thereof with the firm's mailing room personnel for mailing in accordance with the firm's ordinary practices.:

Chief, Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Chief, Policy Division
Wireless Competition Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Victoria Schlesinger
Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Gregory Vadas
Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Qualex International, Portals II
445 Twelfth Street, S.W.
CY-B402
Washington, D.C. 20554

Gene A. DeJordy
Vice President, Regulatory Affairs
Western Wireless Corporation
3650 131st Avenue SE, Suite 400
Bellevue, WA 98006

Leonard J. Kennedy
Senior Vice President & General Counsel
Joel M. Margolis
Senior Corporate Counsel - Regulatory
Nextel Communications, Inc
2001 Edmund Halley Drive
Reston, VA 20191

Brent Eilefson
Corporate Counsel
Nextel Partners, Inc.
10120 W. 76th Street
Eden Prairie, MN 55344

Brian T. O'Connor
VP, Legislative and Regulatory Affairs
Harold Salters
Director, Federal Regulatory Affairs
T-Mobile USA, Inc.
401 9th Street, N.W., Suite 550
Washington, D.C. 20004


Greg Tedesco
Exec. Director, Intercarrier Relations
T-Mobile USA, Inc.
2380 Bisso Drive, Suite 115
Concord, CA 94520-4821

Dan Menser
Senior Corporate Counsel
T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006

Richard M. Rindler
Patrick J. Donovan
Harisha J. Bastiampillai
Swidler Berlin Shereff Friedman LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on November 1, 2002, at San Francisco, California.



Noel Gieleghe